IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8686 OF 2004

M/s. Duwell Agency & Ors. ... Petitioners

Vs.

The Pune Peoples Co-operative Bank Ltd. Pune & Ors. ... Respondents

Mr. Y.S. Jahagirdar, senior counsel i/b Mr.P.S. Dani for the petitioners.

Mr. A.Y. Sakhare, senior counsel with Mr. Kirit J. Hakari for respondent 1.

Mr. R.G. Ketkar for respondent 3.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND FEBRUARY, 2005.

P.C.:-

1. The petitioners have challenged in this petition order dated 7/10/2004 passed by the Additional District Judge, Pune, in Misc. Civil Appeal No.266 of 2004 filed by the petitioners challenging the order dated 30/7/2004 passed by the 4th Joint Civil Judge, Junior Division, Pune.

2. The petitioners have filed R.C.S. No.905 of 2004 in the Court of Civil Judge, Junior Division, Pune at Pune against the respondents - The Pune Peoples Co-operative Bank Ltd., Pune, and others praying, inter alia, -

"(i) It be declared that the act of the Defendant No.1 in withholding the documents of title pertaining to the house property of the Plaintiffs No.2 and 3 with it despite of the fact of repayment of the loan for which the same was the security, is an act illegal, improper and, fraudulent.

(ii) The act of the Defendants No.1 and 2 in taking action on the basis of the title deeds in their custody and also on the basis of the alleged documents of mortgage alleged to have been executed in the year 1991, 1997 and 2000 or thereafter, be declared as fraudulent, non-est and invalid.

(iii) The Notices dt. 13/3/2004, 20/5/2004 and 22/5/2004 alleged to have been issued under the provisions of the Securitisation Act by the defendant No.2 for and on behalf of the defendant No.1 bank be declared as illegal, null and void."

3. In that suit, defendants 1 and 2 raised objection regarding jurisdiction. An application was filed under section 9A of the Code of Civil Procedure. It was urged

that in view of section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short, "the said Act") the Civil Court has no jurisdiction to entertain the present suit. The said issue was heard as a preliminary issue. The trial court held that it had no jurisdiction to entertain and try this suit. An appeal carried by the petitioners was also dismissed and, hence, this petition.

4. I have heard Mr. Jahagirdar, the learned counsel appearing for the petitioners. He contended that both the courts have erred in taking a view that the civil court has no jurisdiction to entertain the present suit. He drew my attention to the judgment of the Supreme Court in **Mardia Chemicals Ltd. & Ors. v. Union of India & Ors., (2004) 4 SCC 311**, and contended that though section 34 of the said Act bars the jurisdiction of the Civil Court in respect of matters which a Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine in respect of any action taken or to be taken in pursuance of any power conferred under the said Act, in this judgment, the Supreme Court has carved out an exception as regards the cases in which a civil suit can be filed. He pointed out that the Supreme Court has observed that to a very limited extent jurisdiction of the civil court can also be invoked, where for example, the action of the secured creditor is alleged to be fraudulent or his claim may be so absurd and untenable which may not require any probe whatsoever. He drew my

attention to the plaint and contended that the petitioners' case falls in the said category and, therefore, it was not proper for the courts below to hold that the civil court had no jurisdiction to entertain the present suit.

5. I am unable to agree with the learned counsel. Admittedly, the petitioners had filed Writ Petition No.4135 of 2004 challenging the same notice. In the said petition, similar contentions were raised. The Division Bench, after going through the averments of the petition, observed that the petitioners have a remedy, which lies in the Debt Recovery Tribunal. The said order dated 24/6/2004 read as under:

> "1. Pursuant to the notice issued under sec.13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Bank has taken possession of the shop premises. Remedy of the petitioner is to approach DRT for appropriate reliefs in accordance with law.
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> 2. All contentions on merits are left open to the parties.
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> 3. Petition is disposed of."

I am informed that the same Division Bench was again moved for clarification and the Division Bench expressed that no clarification was required. The said order was not challenged by the petitioners. In view of this, the courts below cannot be faulted for taking a view that the petitioners' remedy lies in the Debt Recovery Tribunal. In the circumstances, the petition is rejected.

6. At this stage, Mr. Jahagirdar, the learned counsel for the petitioners states that the interim order earlier granted by this court may be continued for some time as the petitioners want to approach the Supreme Court. Mr. Sakhare, the learned counsel for the respondents objects. In the circumstances of the case, the interim order earlier granted to continue for a period of four weeks from today.

7. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)